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# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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STAFF DIRECTOR

October 30, 2013

Mr. Jon Hager  
Executive Director  
Silver State Health Insurance Exchange  
2310 S. Carson Street, Suite 2  
Carson City, NV 89701

Dear Mr. Hager:

The Committee on Oversight and Government Reform is conducting oversight of the implementation of the Patient Protection and Affordable Care Act, commonly known as ObamaCare.<sup>1</sup> ObamaCare requires that all of the newly established health insurance exchanges establish a Navigator program for the purpose of conducting unbiased educational and outreach efforts and facilitating patient enrollment in the exchanges.<sup>2</sup> Each exchange must award grants to at least two Navigator entities, and the law explicitly prohibits Navigators from receiving funding from federal exchange establishment grants.<sup>3</sup> Mr. Gary Cohen, a senior official with the Department of Health and Human Services testified before the Committee that many states informed HHS that they would not fund Navigators with state funds.<sup>4</sup> As a result, HHS created “in-person assisters” (Assister) organizations.

According to HHS officials, Assister organizations will conduct identical activities as Navigators in state-based and some partnership exchanges.<sup>5</sup> Despite the law’s prohibition on federal funding for Navigators and the fact that individuals hired by Navigator and Assister organizations will perform identical roles, HHS made the decision

<sup>1</sup> PATIENT PROTECTION AND AFFORDABLE CARE ACT, PUB. LAW 111-148 §1311.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Examining the Concerns About the ObamaCare Outreach Campaign, Hearing Before the H. Comm. on Oversight & Govt. Reform, Subcomm. on Energy Policy, Health Care, and Entitlements, and Subcomm. on Economic Growth, Job Creation and Regulatory Affairs, 113th Cong. 20-21 (2013)* (Statement of Gary Cohen, Director, Center for Consumer Information and Insurance Oversight).

<sup>5</sup> Transcribed Interview of Gary Cohen, U.S. Dep’t of Health & Human Serv., in Wash., D.C. (Aug. 7, 2013); Transcribed Interview of Vicki Gottlich, U.S. Dep’t of Health & Human Serv., in Wash., D.C. (July 25, 2013).

to fund Assister organizations from federal exchange establishment grants.<sup>6</sup> On September 18, 2013, the Committee released a staff report entitled, “Risks of Fraud and Misinformation with ObamaCare Outreach Campaign: How Navigator and Assister Program Mismanagement Endangers Consumers,” which outlined significant problems with both the Navigator and Assister programs.<sup>7</sup> We write to respectfully request your cooperation with the Committee’s efforts to conduct oversight of HHS’s development and management of the Navigators and Assisters programs.

Documents obtained by the Committee show that HHS staff worried that Assisters would be viewed as “de-facto” Navigators and that there would be much greater spending on the federally-funded Assisters than the state-funded Navigators.<sup>8</sup> It appears the concern was warranted. For example, the District of Columbia’s exchange will spend approximately \$35 million on Assisters, but only \$100,000 on Navigators.<sup>9</sup> Covered California, the state-based exchange for the state of California, will not award Navigator grants until June 2014, nine full months after open enrollment on October 1, 2013.<sup>10</sup> However, California plans to spend \$58 million of federal establishment funds on Assisters over the next year.<sup>11</sup> California’s decision not to have a Navigator program until mid-2014, at the earliest, indicates that HHS is not enforcing the requirement that all exchanges establish a Navigator grant program.<sup>12</sup>

HHS’s funding of state Assister programs is only one of many of the Committee’s concerns regarding the Navigator and Assister outreach programs. The Committee’s staff report outlined many of these concerns, including:

- HHS failed to conduct any analysis about whether it should require individuals hired by Navigator and Assister organizations to pass a background check and be fingerprinted.<sup>13</sup>

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<sup>6</sup> 78 Fed. Reg. 42823 (July 17, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-07-17/pdf/2013-17125.pdf>.

<sup>7</sup> *Risks of Fraud and Misinformation with ObamaCare Outreach Campaign: How Navigator and Assister Program Mismanagement Endangers Consumers*, Staff Report, OVERSIGHT & GOVT. REFORM COMMITTEE (Sept. 18, 2013).

<sup>8</sup> Email from Brian Schwartz, to Vicki Gottlich, Director, Consumer Support Group, CCIIO, IPA vs. Navigator funding in an SBE (Dec. 14, 2012).

<sup>9</sup> Oversight & Govt. Reform Briefing by DC Exchange Officials (Aug. 26, 2013).

<sup>10</sup> Enrollment Assistance Program, Proposed 2013 Timeline, California Health Benefit Exchange, (last visited Sept. 24, 2013), available at <http://www.healthexchange.ca.gov/Pages/EnrollmentAssistanceProgram.aspx>.

<sup>11</sup> Tricia Brooks, *Assister Types Abound: But Will Navigators and Assisters Be Plentiful Enough?* Georgetown University Health Policy Institute blog (May 17, 2013), <http://ccf.georgetown.edu/all/assister-types-abound-but-will-navigators-and-assisters-be-plentiful-enough/>.

<sup>12</sup> See Enrollment, *supra* note 10.

<sup>13</sup> See Report, *supra* note 7 at 11.

- During transcribed interviews, both Gary Cohen, the Director of HHS's Center for Consumer Information and Insurance Oversight, and Vicki Gottlich, the top HHS official engaged in the day-to-day development of the Navigator and Assister programs until June 2013, acknowledged the concern that con artists and identity thieves will pose as Navigators and Assistors. Ms. Gottlich testified that this problem will only increase as ObamaCare is fully implemented. Both Mr. Cohen and Ms. Gottlich also admitted that HHS has not yet provided consumers with a reliable way to verify the identity or authenticity of certified Navigators or Assistors.<sup>14</sup>
- HHS officials have deemed several marketing activities inappropriate, such as door-to-door solicitation. However, HHS has only prohibited door-to-door marketing in federal exchanges and not in state exchanges and HHS has not widely publicized the prohibition on door-to-door marketing in federal exchanges.<sup>15</sup>
- Ms. Gottlich testified that there is a potential conflict of interest for Navigators and Assistors who are paid based on the number of persons they enroll for coverage through ObamaCare. Despite HHS' decision to prohibit a per-enrollee payment structure in states with federal exchanges, HHS has not prohibited this payment structure in states with state-based exchanges. Refusing to do so raises the risk that consumers in these states will get misinformation about the law.<sup>16</sup>
- The Administration expects that individuals applying to be Navigators and Assistors will lack any experience related to health insurance and ObamaCare. Despite this expected lack of experience, Mr. Cohen testified that it would be "logical" for Navigators and Assistors to conduct outreach activities *prior* to completing the training.<sup>17</sup>

To assist the Committee with its oversight of the ObamaCare outreach program, we request that you produce the following documents and information, in electronic format, as soon as possible, but no later than 5:00 p.m. on November 13, 2013:

1. All documents and communications referring or relating to organizations that received In-Person Assistance or Assister grants, the date the grant was awarded, and the amount of the grant;

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<sup>14</sup> *Id.* at 13.

<sup>15</sup> *Id.* at 16-9.

<sup>16</sup> *Id.* at 21.

<sup>17</sup> *Id.* at 24.

2. All documents and communications referring or relating to organizations that received Navigator grants, the date the grant was awarded, and the amount of the grant;
3. All documents and communications referring or relating to the funding opportunity announcement for the state Navigator program;
4. All documents and communications referring or relating to the funding opportunity announcement for the state In-Person Assistance or Assister program;
5. All documents and communications referring or relating to every entity in the state that applied for the state Navigator program;
6. All documents and communications referring or relating to every entity in the state that applied for the state Assister program;
7. All documents and communications between employees or agents of the state exchange and employees or agents of HHS referring or relating to:
  - a. Training requirements for Navigators and Assisters;
  - b. Background checks or fingerprinting for Navigators and Assisters; and
  - c. Marketing techniques allowable or prohibited for Navigators and Assisters;
8. All documents and communications between employees or agents of the state exchange referring or relating to:
  - a. Training requirements for Navigators and Assisters;
  - b. Background checks or fingerprinting for Navigators and Assisters; and
  - c. Marketing techniques allowable or prohibited for Navigators and Assisters; and
9. All documents and communications referring or relating to materials that will be used by agents of the state exchange, including but not limited to grant recipients, to advertise or educate the public about ObamaCare.

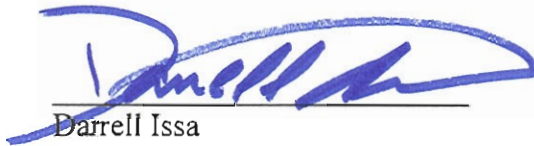
When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

Mr. Jon Hager  
October 30, 2013  
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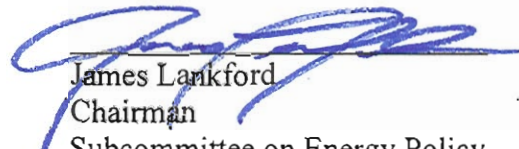
The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

If you have any questions about this request, please contact Emily Martin or Brian Blase of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

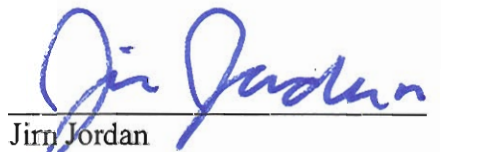
Sincerely,



Darrell Issa  
Chairman



James Lankford  
Chairman  
Subcommittee on Energy Policy,  
Health Care and Entitlements



Jim Jordan  
Chairman  
Subcommittee on Economic Growth,  
Job Creation and Regulatory Affairs

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Jackie Speier, Ranking Minority Member  
Subcommittee on Energy Policy, Health Care and Entitlements

The Honorable Matthew A. Cartwright, Ranking Minority Member  
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
2157 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6143

Majority (202) 225-5074  
Minority (202) 225-5051

**Responding to Committee Document Requests**

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,  
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,  
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,



CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **Schedule Definitions**

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.



3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.